

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 13th May, 2004 pursuant to Arizona Revised Statutes Section 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by City Charter, Article 1, Section 103 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. In conjunction with the State's roadway construction of the Santan Freeway (SR 202L) from Power Road to Elliot Road, the City requests the State incorporate the following two items into the State's construction project: 1) The design and construction of additional left turn lanes at the Hawes Road traffic interchange (TI), a lump sum cost of \$125,007.00 at the City's expense; and 2) The construction of miscellaneous utility enhancements related to the City's water and sewer facilities, estimated at \$2,062,918.00, at the City's expense, totaling \$2,187,925.00 and detailed on Exhibit A, attached hereto and made a part hereof, herein collectively referred to as the "Project". Exhibit A items include a fixed cost of 14% for construction engineering and administration.

4. Relative to the State's construction of City's utility enhancements associated with the water and sewer facilities referenced herein, it is understood that the State is acting as a third party ("an Agent") on behalf of the City and at no time is the State to be considered the owner of, operator of, or locator for the City's facilities.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26823
Filed with the Secretary of State
Date Filed: 05/13/04
Janice K. Brewer
Secretary of State

By: Vincent S. Greenwald

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement, invoice the City \$1,100,000.00 then on January 1, 2005 invoice the City the remaining estimated balance of \$1,087,925.00 for the total estimated Project costs of \$2,187,925.00, which includes a fixed rate of 14% for construction engineering and administration costs, as shown on Exhibit A.

b. Agree to be authorized agent for the City in association with the Project. Prepare to State and City standards; design plans, specifications and other such documents and services required for the bidding and construction of the Project, and provide to the City for approval.

c. On behalf of the City and upon receipt of the City's written approval of the plans, call for bids, award one or more construction contracts to accomplish the Project; administer same and make all payments to the contractor(s). Confer with the City on any contract modifications related to the Project.

d. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State's roadway construction of the Santan Freeway (SR 202L).

e. Upon completion, coordinate final inspection of the Project with the City for approval and acceptance of the City's items shown on Exhibit A.

f. Upon completion of the Project, invoice or reimburse the City any difference between the amount paid by the City and the actual cost for construction of item 2 referenced in I.3 of the Recitals, which includes a fixed rate of 14% for construction engineering and administration costs. Any monies to be returned to the City will be remitted upon 30 days following final contractor disbursements for the City's items related to the Project.

2. The City will:

a. Upon execution of this agreement, receipt and approval of an invoice, remit to the State \$2,187,925.00 in two payments as identified in Article II.1.a above, for the estimated costs of the Project, which includes a fixed rate of 14% for construction engineering and administration costs, as shown on Exhibit A.

b. Be responsible for the lump sum amount of \$125,007.00 for design and construction costs of item 1 and the actual amount for construction costs of item 2 under Recital I.3, estimated at \$2,062,918.00, which includes a fixed rate of 14% for construction engineering and administration. Total estimate for the Project is \$2,187,925.00. Additionally, be responsible for post design services associated with the Project as identified herein.

c. Hereby designate the State as authorized agent for the City.

d. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the City.

e. Upon completion and acceptance of the Project, reimburse the State any difference between the amount paid by the City and the actual cost for construction of item 2, which includes a fixed rate of 14% for construction engineering and administration costs, detailed on Exhibit A.

f. Upon completion and acceptance of the referenced Project by the State, provide maintenance for item 2 of Exhibit A related to the Project.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of the work contemplated herein and reimbursements; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to award of the construction project, with prior written notice to the other party.

2. It is understood by the parties, that in the event the City terminates this agreement, the City will be responsible for all costs incurred by the State for the Project prior to termination. Said costs incurred by the State up to the time of termination, will be deducted from the City's deposit prior to returning any unused funds to the City, and the City will assume ownership, operation and maintenance of any enhancements that were installed by the State prior to the termination of the agreement. In the event the State terminates this agreement prior to the completion of the Project, the State shall deduct from the City's deposit the costs incurred by the State for the Project up to the time of termination and shall refund the remaining unused portion of the City's deposit, and the City shall have the right to complete the Project enhancements as described within the agreement under a separate contract at the City's expense. The City will be responsible for the ownership, operation and maintenance costs associated with the Project enhancements.

3. The State assumes no financial obligation or liability under this agreement in association with the Project work requested by the City and provided herein. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims in relation to the Project herein. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9 In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Contract Issues:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007
FAX: (602) 712-7424

City of Mesa
City Manager
PO Box 1466
Mesa, AZ 85211-1466
FAX: (480) 644-2175

For Billing Issues:

Arizona Department of Transportation
Finance - Cost Accounting
206 South 17 Avenue, MD 204B
Phoenix, AZ 85007
FAX: (602) 712-7424

City of Mesa
City Manager
PO Box 1466
Mesa, AZ 85211-1466
FAX: (480) 644-2175

11. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determinations of each party's legal counsel, that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF MESA

STATE OF ARIZONA

Department of Transportation

By: 

MICHAEL HUTCHINSON
City Manager

By: 

DANIEL S. LANCE, P. E.
Deputy State Engineer

ATTEST:

By: 

BARBARA JONES
City Clerk



**EXHIBIT A
SUMMARY**

**SANTAN FREEWAY (SR 202L)
DESCRIPTION AND COST OF PAY ITEMS FOR CITY OF MESA**

ITEM	DESCRIPTION	COST		TOTAL	DESCRIPTION
		DESIGN	CONSTRUCTION		
1	ADDITIONAL LEFT-TURN LANES AT HAWES RD	See sheet 2	See sheet 2	\$125,007	Lump sum cost to design and construct additional left turn lanes at Hawes Road (Mesa/ADOT=50/50 split).
Item 1 SubTotal:					\$125,007
2	CITY OF MESA UTILITY ENHANCEMENTS	\$0	\$1,809,577	\$1,809,577	City of Mesa requested utility enhancements (design fees contracted with consultant separately).
Item 2 SubTotal:					\$1,809,577
	14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	\$0	\$253,341	\$253,341	Construction Engineering and Administration was calculated on a percentage basis of the construction cost for Item 2 only.
	5% DESIGN ENGINEERING ADMINISTRATION	\$0	\$0	\$0	No design administration required for this project
Item 2 Total:					\$2,062,918
Item 1 Total:					\$125,007
GRAND TOTAL					\$2,187,925

EXHIBIT A

ITEM 1 SUMMARY BACKUP

12/2/2003 0:00

HIGHWAY SANTAN

ID NO. 202L16RC

WORK DESCRIPTION

SECTION HAWES ROAD

Additional left turn lanes - COM Standard

LENGTH N/A Level 2

PROJECT STATUS: Life Cycle Program Ultimate

ITEM	MAJOR ITEM DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
200	EARTHWORK ROADWAY EXCAVATION DRAINAGE EXCAVATION BORROW TOTAL ITEM 200	CU.YD. CU.YD. CU.YD.			
300 & 400	BASE AND SURFACE TREATMENT CONCRETE PAVEMENT ASPHALT PAVEMENT TOTAL ITEM 300 & 400	SQ.YD. SQ.YD.	2,377	\$24	\$57,048 \$57,048
500	DRAINAGE ON-SITE OFF-SITE (LONGER BOX CULVERT) PUMP STATION TOTAL ITEM 500	MILE L.FT. EACH			
600	STRUCTURES NUMBER OF STRUCTURES: OTHER: ADDITONAL ABUTMENT CONCRETE TOTAL ITEM 600	SQ.FT. CU.YD.			
700	TRAFFIC ENGINEERING SIGNING STRIPING SIGNAL/LIGHTING TOTAL ITEM 700	L.SUM L.SUM MILE			
900	INCIDENTALS UTILITIES WALLS (RETAINING & SOUND) HAND RAIL MEDIAN PAVING TOTAL ITEM 900	FT SQ.FT. FT L.SUM	382.00 2,164 382 1	\$30 \$25 \$30 \$18,000	\$11,460 \$54,100 \$11,460 \$18,000 \$95,020
SUBTOTAL A (ITEMS 200 THRU 700 & 900)					\$152,068
OTHER ITEMS (25% OF SUBTOTAL A)					\$38,017
800	LANDSCAPING	MILE			
SUBTOTAL B (SUBTOTAL A + OTHER ITEMS + ITEM 800)					\$190,085
CONTINGENCY & ENGINEERING : CONSTRUCTION (14% OF SUBTOTAL B)					\$26,612
TOTAL ESTIMATED CONSTRUCTION COST					\$216,697
DESIGN COST (5.5%)					\$11,918
ADDITIONAL R/W		SQ.FT.	10,190	\$2.10	\$21,399
GRAND TOTAL					\$250,014
ITEM 1 LUMP SUM SUBTOTAL (50/50 SPLIT)					\$125,007

EXHIBIT A
ITEM 2 SUMMARY BACKUP

ENGINEER'S ESTIMATE VERSION (100%)
JPA 03-046
DATE: 12/02/2003

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1					
2					
3	REMOVE (16-INCH / 10-INCH / 10-INCH SEWER)	L.SUM	1	\$ 20,000.00	\$ 20,000.00
4	MANHOLE (MAG DET. 420, 424 & 426)	EACH	2	\$ 4,000.00	\$ 8,000.00
5	ELECTRICAL CONDUIT (4-2 INCH QUAD-DUCT)(FIBER OPTIC)	L.FT.	1,100	\$ 6.00	\$ 6,600.00
6	PIPE, DUCTILE IRON, 4"	L.FT.	140	\$ 30.00	\$ 4,200.00
7	BLOW-OFF ASSEMBLY (8") (EACH	3	\$ 6,500.00	\$ 19,500.00
8	VALVE (4")	EACH	1	\$ 500.00	\$ 500.00
9	PIPE, DUCTILE IRON, 16"	L.FT.	638	\$ 95.00	\$ 60,610.00
10	PIPE, DUCTILE IRON, 24"	L.FT.	556	\$ 140.00	\$ 77,840.00
11	PIPE, DUCTILE IRON, 30"	L.FT.	1,437	\$ 180.00	\$ 258,660.00
12	SEWER PIPE (18 INCH)	L.FT.	658	\$ 65.00	\$ 42,770.00
13	CASING (24 INCH) (STEEL)	L.FT.	1,344	\$ 250.00	\$ 336,000.00
14	CASING (36 INCH) (STEEL)	L.FT.	467	\$ 300.00	\$ 140,100.00
15	CASING (42 INCH) (STEEL)	L.FT.	529	\$ 350.00	\$ 185,150.00
16	MISCELLANEOUS WORK (INSTALL COM 8 INCH STEEL GAS LINE)	L.FT.	862	\$ 55.00	\$ 47,410.00
17	MISCELLANEOUS WORK (CASING)(48 INCH)(STEEL)	L.FT.	1,085	\$ 400.00	\$ 434,000.00
18					
19					
20	SUBTOTAL CONSTRUCTION COST (1)				\$ 1,641,340.00
21					
22	CONSTRUCTION SURVEYING AND LAYOUT SHARE	L.SUM	1	1.50%	\$ 24,620.00
23	CONTRACTOR QUALITY CONTROL SHARE	L.SUM	1	0.75%	\$ 12,310.00
24	MOBILIZATION SHARE	L.SUM	1	8.00%	\$ 131,307.00
25					
26	ITEM 2 SUBTOTAL				\$ 1,809,577.00

RESOLUTION NO. 8215

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE DESIGN AND CONSTRUCTION OF FREEWAY ENHANCEMENTS ALONG THE SANTAN FREEWAY FROM POWER ROAD TO ELLIOT ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the design and construction of the freeway enhancements along the Santan Freeway from Power Rd to Elliot Rd (ADOT JPA No. 03-046); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 19th day of April, 2004.



APPROVED:

Reno Hawker
Mayor

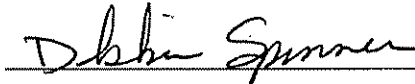
ATTEST:

Diane Jones
City Clerk

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 24th day of April, 2004.



City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

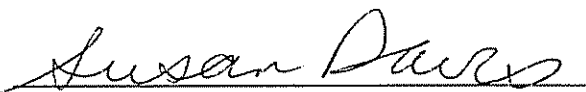
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0057TRN (**JPA 03-046**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 10, 2004

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section